

APR 13 1993

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Federal Communications Commission
Attention: Office of the Secretary
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: The Use of N11 Codes and Other Abbreviated Dialing
Arrangements
CC Docket No. 92-105

TO THE SECRETARY:

Enclosed please find an original and five copies of a motion for leave to file comments. I would appreciate your filing the original and favoring me with a date-stamped copy of the motion, as filed, in the enclosed, self-addressed envelope.

Thank you for your assistance.

Very truly yours,

John A. Bussian III
John A. Bussian III

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Enclosure

cc: Mr. W. T. Barfield

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

The Use of N11 Codes and
Other Abbreviated Dialing

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In the Matter of)	
)	
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Other Abbreviated Dialing)	
Arrangements)	

COMMENTS OF THE DURHAM HERALD COMPANY

John A. Bussian III

Its Attorney

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April 8, 1993

Exhibit A

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SUMMARY

The Durham Herald Company, d/b/a The Herald-Sun ("Herald-Sun") supports the Federal Communications Commission's ("FCC's") proposed codification of the requirement that local exchange carriers make available abbreviated dialing codes. Availability of abbreviated dialing codes for enhanced services promotes the public interest and convenience, encourages efficient use of the telephone system, and increases competition. The rules and policies governing the use of the abbreviated dialing codes for enhanced services should be left to the State's public utility commissions.

The First Amendment of the United States Constitution and the Federal Communication Act obligate common carriers to furnish enhanced services to the public if such services promote the public interest and convenience and the enhanced services do not unacceptably impact existing telephone services. The local use of abbreviated dialing codes for enhanced services meets the public's demand for suitable access to information.

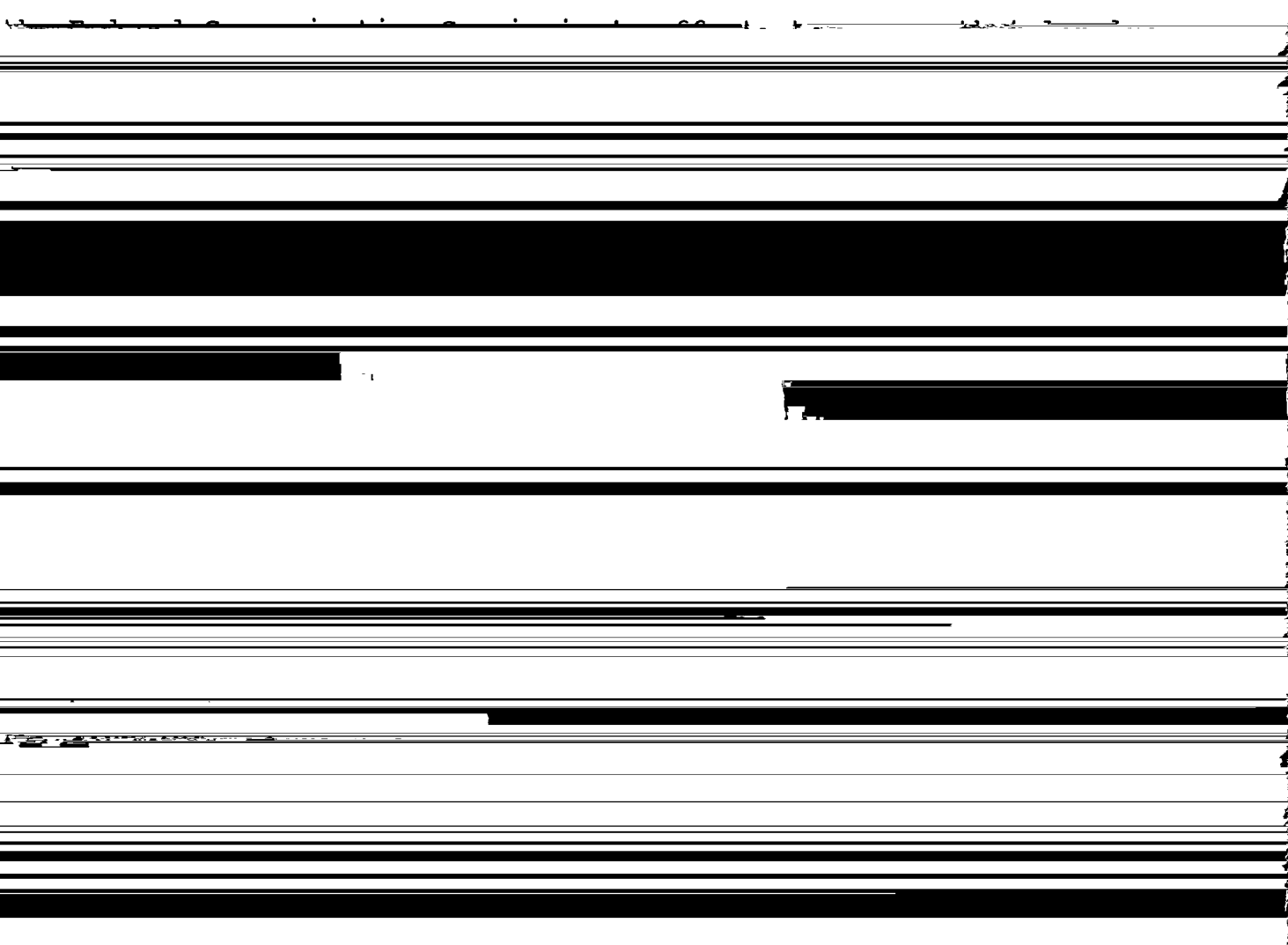
The provision of local abbreviated dialing codes to the public would not unacceptably impact existing services and would encourage efficient use of the unused systems. N11-type abbreviated dialing codes are largely unused at the present time in local telephone exchanges across the country.

While the FCC does not have the authority under Title II of the Federal Communications Act to regulate the provision and use of enhanced services, it does have ancillary jurisdiction over the providing of N11 service in the first instance. Because the use of

the abbreviated dialing codes for enhanced services would be on a local or intrastate basis, the individual states' public utility commissions are the appropriate governing bodies to regulate the provision and use of such services. However, the Federal Communications Commission does have ancillary jurisdiction over the question of whether enhanced services will be provided at all.

Abbreviated dialing codes should only be assigned within each area code because such an assignment area would not require new technology or equipment on the part of the local exchange carriers. Each local exchange carrier presently uses the exact technology necessary for the assignment of the abbreviated dialing codes for their own provision of enhanced services to their customers.

For these reasons, the Durham Herald Company ("DHC") supports



In the Matter of)
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The Use of N11 Codes and)
Other Abbreviated Dialing)
Arrangements)

The Durham Herald Company, d/b/a the Herald-Sun Newspapers, Inc. ("Herald-Sun"), by and through its attorneys, hereby submits these comments on the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking (the "Notice") in the above-referenced matter.¹ Contemporaneously with the adoption of the Notice, the FCC's General Counsel issued a letter ruling informing BellSouth Corporation that there are no legal or regulatory impediments to the assignment of abbreviated N11 dialing codes ("N11 Codes") by local

1

exchange carriers ("LEC") on a first-come, first served basis. Letter from Robert L. Pettit, General Counsel, FCC, to David J. Markey, Vice President-Federal Regulatory, BellSouth Corporation (May 4, 1992) (the "Pettit Letter").

Notwithstanding the FCC's communication to BellSouth, the Notice solicits public comment on, among other things, whether the assignment of N11 Codes for the provision of enhanced services would continue to serve the public interest, the means of allocating the N11 Codes, the role of state regulators and the feasibility of alternative dialing arrangements. The Herald-Sun believes that the FCC should adopt rules codifying LECs' obligation to make N11 Codes generally available for enhanced services but that the regulations and policies governing the provision and use of the N11 Codes for enhanced services should be left to the states.

I. INTRODUCTION

The Durham Herald Company is a North Carolina corporation that provides thousands of consumers with daily information through its daily newspapers and broadcast outlets.² In order to better serve the public interest and convenience by providing suitable access to social, political, aesthetic, moral and other ideas and experiences, the Herald-Sun seeks to provide new enhanced informational services to the public through the use of N11 Codes. Further to these goals, the Herald-Sun first requested access to N11 Codes for the provision of such enhanced service from GTE South Incorporated ("GTE"). Even

²The Durham Herald Company publishes a daily newspaper and operates two radio stations in the Research Triangle Park area of North Carolina.

though the First Amendment of the United States Constitution and the Federal Communications Act require common carriers to furnish all reasonable communication facilities that will promote the public interest and convenience, GTE has declined to make an N11 Code available. Consequently, the Herald-Sun has been forced to petition the North Carolina Public Utilities Commission for the assignment of an N11 Code from GTE.

The FCC has the authority to direct LECS, like GTE, to make N11 Codes available to enhanced service providers. While the FCC has the power to require LECs to provide N11 Codes, the rules and policies governing the actual assignment and use of the N11 Codes are properly left to the States. The Herald-Sun believes that adopting rules and policies consistent with these comments will achieve the ultimate goal of the Federal Communications Act of convenient and efficient telecommunication services to the general public.

II. GENERAL AVAILABILITY OF N11 CODES FOR LOCAL ASSIGNMENTS WILL SERVE THE PUBLIC INTEREST.

Local assignment of N11 Codes will serve the public interest and convenience by meeting an existing public demand, encouraging a more efficient use of the telephone system and increasing competition. However, LECS, like GTE, will not make N11 Codes promptly available to non-LECs unless the FCC adopts rules expressly requiring them to do so.³

³Some LECs, like BellSouth, have made or are making N11 Codes available to enhanced service providers.

A. The Use of N11 Codes for Local Assignments Will Serve the Public Interest.

The overriding purpose of the FCC's authority to regulate the telephone industry is to promote the public interest, convenience and necessity. Columbia Broadcasting v. Democratic Committee, 412 U.S. 94, 36 L. Ed. 2d 772, 93 S Ct. 2080, and Mansfield Journal Co. v. Federal Communications Commission, 86 App. D.C. 102, 180 F.2d 28 (1950). In fact, the Federal Communications Act provides:

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall..... (r) make such rules and regulations or prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter. .
. 47 U.S.C. §303

The public's interest and convenience is served by providing all suitable and necessary access to information. The Supreme Court in Columbia Broadcasting v. Democratic Committee, supra, stated, in

overall cost of using the telephone system to the general public which would be in the public interest and convenience.

Finally, some LECs are already using N11 Codes to provide enhanced services to their customers. (See Section II.B. herein.) Because the LECs have complete control over the provision of N11 Codes, the LECs are exercising monopolistic powers over this segment of the information market. Congress, in enacting the Federal Communications Act to regulate common carriers, did not intend to grant antitrust immunity to LECs with respect to anticompetitive conduct and behavior. Macom Products Corporation v. AT&T, 359 F.Supp. 973, (C.D. Cal., 1973). N11 Codes are a limited resource. A monopoly, by definition, is anti-competitive. The only way to make a monopoly more competitive is to provide others with access to the limited resource controlled by the monopoly. By requiring the LECs to provide N11 Codes to enhanced service providers, the FCC would be encouraging competition within the informational service market which would be in the public interest and convenience.

The Herald-Sun intends to use the N11 Codes to provide convenient and necessary access to social, political, aesthetic and moral information which the Herald-Sun provides in its daily newspapers. This use of the N11 Code by the Herald-Sun would also increase competition and efficiency in the provision of informational and telephone services to the general public. By encouraging competition in the provision of informational services and increasing the efficiency of the system, this type of enhanced service would promote the public interest, convenience and

necessity. Because promoting the public interest, convenience and necessity is the ultimate purpose behind the Federal Communications Act, the FCC should require LECs to provide N11 Codes to enhanced service providers.

B. The Use of N11 Codes for Local Assignments Will Not Unacceptably Impact Existing Telephone Services.

If the use of N11 Codes for enhanced services promotes the public interest, convenience and necessity, the LECs are obligated to provide such services unless the provision of such services would unacceptably impact existing telephone use. Hush-A-Phone Corporation v. U.S., 99 App. D.C. 190, 238 F.2d 266, and Re Coastal Auto Parts, Inc., 20 FCC 2d 319 (1969). The courts have stated that:

"It would be unjust, unreasonable and unlawful under 47 U.S.C. §201, to restrict customer's right to use beneficial services that are not publicly detrimental . . . Re AT&T, 53 FCC 2d 473, (1978).

There is no evidence that the use of N11 Codes for enhanced services would have any detrimental effect on the provision of telephone services to the public. In fact, LECs presently use N11 Codes for the provision of enhanced services to their customers. Bell Atlantic offers call completion service to customers calling 411, and similar services have been approved in Texas for Southwestern Bell. Pacific Telesis has announced its intention to provide enhanced directory assistance, including directions to commercial establishments. Southwestern Bell also has proposed to provide zip codes to 411 callers on request. In addition, because the telephone industry has used N11 Codes to provide directory

assistance and emergency services for over two decades, local use of N11 Codes will be easy to implement.

The use of N11 Codes by enhanced service providers will promote the public interest, convenience and necessity. Such use of N11 Codes also does not impair, in any way, the use of the telephone system. Therefore, LECs are obligated to provide N11 Codes to enhanced service providers like the Herald-Sun.

III. THE FCC HAS THE AUTHORITY TO REQUIRE THE AVAILABILITY OF N11 CODES, BUT THE RULES GOVERNING THE PROVISION AND USE OF N11 CODES SHOULD BE LEFT TO THE STATES.

The public interest and convenience in assigning N11 Codes for the provision of enhanced services is clear. If LECs were responsive to requests for the use of N11 Codes from informational service providers, there would be little or no need for the FCC to regulate this area. In fact, the FCC's authority over the availability of N11 Codes stems from the LECs' refusal to provide access to N11 Codes. However, given, not only, GTE's response to the Herald-Sun's request for access to N11 Codes but other LECs' responses to requests for N11 Codes, it is unlikely that LECs will make N11 Codes available without the FCC expressly requiring the LECs to do so.⁴

A. The FCC has the Authority to Require LECs to Provide Access to N11 Codes for Enhanced Service Providers.

While the Communications Act does not require LECs to seek permission from the FCC to provide enhanced services that do not

⁴Not only has GTE resisted requests for N11 Codes by enhanced service providers in States like Texas, but as the comments from other LECs submitted in this matter indicate, most LECs are opposed to providing N11 Codes to enhanced service providers.




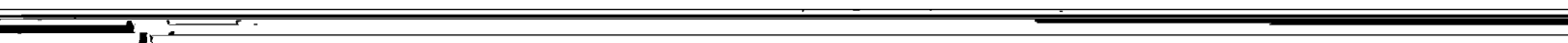
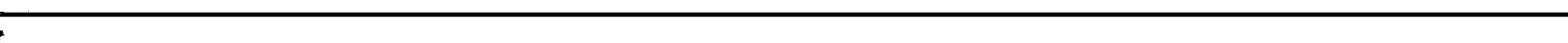



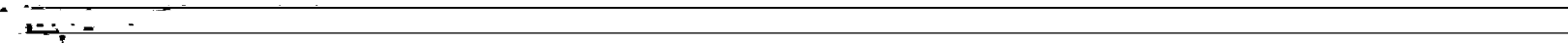

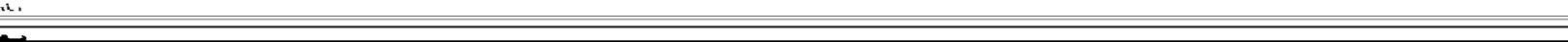



unacceptably impair the provision of telephone service to the general public. 47 U.S.C. 202(a), the Communications Act does make it unlawful for the LECs to restrict access to enhanced services that do not unacceptably impair the provision of telephone service to the general public. 47 U.S.C. §202(a), Hush-A-Phone Corporation v. U. S., supra, Re Coastal Auto Parts, Inc., supra, and Re AT&T, supra. In addition, as the Court stated in Macom Products Corporation v. AT&T, supra, the Communications Act was not intended to grant antitrust immunity to LECs with respect to anticompetitive behavior. N11 Codes are a limited resource, and the FCC has asserted its ancillary authority in situations where the common carriers have complete control over a limited resource like the assignment of NXX Codes to cellular carriers. The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC RCD 2910 (1987), recon 4 FCC RCD (1989). The FCC has asserted this authority because the LECs control over a limited resource could be anti-competitive behavior.

As discussed herein, the use of N11 Codes by enhanced service providers will not unacceptably impair the provision of telephone services to the general public. The LECs refusal to grant enhanced service providers access to N11 Codes, which the LECs have control over, is anti-competitive conduct that cannot be protected. The fact that the LECs themselves use the N11 Codes for enhanced services further demonstrates the anti-competitive nature of the LECs' actions. The Communications Act obligates the LECs to provide access to N11 Codes to enhanced service providers. If the LECs

refuse to provide such access, the FCC must enforce this obligation by requiring the LECs to provide access to N11 Codes.

B. The Proposed Use of N11 Codes for Enhanced Services is Intrastate Activity and Should be Regulated by the States.

Because the proposed use of N11 Codes for enhanced services will be solely intrastate, the regulation of the provision and use



those proposed by the Herald-Sun, is in the public interest and convenience.

The LECs have an obligation to provide N11 Codes to enhanced services providers because it is in the public interest, and convenience and the provision of the N11 Codes would not unacceptably impact existing telephone services to the public. In fact, the provision of N11 Codes to enhanced service providers will have no impact on the telephone service to the public. Finally, because use of the N11 Codes occurs solely within a state's boundaries, the regulation of the use and provision of N11 Codes should be left to the states.

For all of these reasons, the Herald-Sun respectfully submits that the FCC should adopt regulations requiring the LECs to provide access to N11 Codes, but should leave the regulation of the provision and use of N11 Codes to the States.

Respectfully submitted,

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